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JANE NORRIS WINTON

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

JANE NORRIS WINTON,

Plaintiff,

v.

NOVARTIS CORPORATION;  
ALCON LABORATORIES, INC.; and  
DOES 1 through 20, inclusive,

Defendants.

Case No. 2:17-cv-00378

[HON. STEPHEN V. WILSON]

**DISCOVERY MATTER: ORDER  
GRANTING STIPULATED  
PROTECTIVE ORDER**

Date Action Filed: December 8,  
2016  
Date FAC Filed: March 30, 2017  
Date SAC Filed: April 24, 2017  
Date TAC Filed: June 14, 2017

1 On September 11, 2017, Plaintiff Jane Norris Winton and Defendants Alcon  
2 Laboratories, Inc. and Novartis Corporation filed a Stipulated Protective Order.  
3 Having considered the contents of the Stipulated Protective Order, and GOOD  
4 CAUSE APPEARING THEREFOR, the Stipulated Protective Order is hereby  
5 approved.

6 **ORDER**

7 IT IS HEREBY ORDERED that Plaintiff Jane Norris Winton and  
8 Defendants Alcon Laboratories, Inc. and Novartis Corporation shall obey the  
9 following rules regarding the production of confidential, proprietary or private  
10 information:

11 1. In this Protective Order, the words set forth below shall have the  
12 following meanings:

13 a. “Proceeding” means the above-entitled proceeding (2:17-cv-  
14 00378-SVW-JEM).

15 b. “Court” means the Hon. Stephen V. Wilson, or any other judge  
16 to which this Proceeding may be assigned, including Court staff participating in  
17 such proceedings.

18 c. “Confidential” means any information which is in the  
19 possession of a Designating Party who believes in good faith that such information  
20 is entitled to confidential treatment under standard developed under F.R.Civ.P.  
21 26(c).

22 d. “Confidential Materials” means any Documents, Testimony or  
23 Information as defined below designated as “Confidential” pursuant to the  
24 provisions of this Protective Order.

25 e. “Designating Party” means the Party that designates Materials  
26 as “Confidential.”  
27  
28

1 f. “Disclose” or “Disclosed” or “Disclosure” means to reveal,  
2 divulge, give, or make available Materials, or any part thereof, or any information  
3 contained therein.

4 g. “Documents” means any “Writing,” “Original,” and  
5 “Duplicate” which have been produced in discovery in this Proceeding by any  
6 person, and any copies, reproductions, or summaries of all or any part of the  
7 foregoing.

8 h. “Information” means the content of Documents or Testimony.

9 i. “Testimony” means all depositions, declarations or other  
10 testimony taken or used in this Proceeding.

11 2. The Designating Party shall have the right to designate as  
12 “Confidential” any Documents, Testimony or Information that the Designating  
13 Party in good faith believes to contain non-public information that is entitled to  
14 confidential treatment under applicable law.

15 3. The entry of this Protective Order does not alter, waive, modify, or  
16 abridge any right, privilege or protection otherwise available to any Party with  
17 respect to the discovery of matters, including but not limited to any Party’s right to  
18 assert the attorney-client privilege, the attorney work product doctrine, or other  
19 privileges, or any Party’s right to contest any such assertion.

20 4. Any Documents, Testimony or Information to be designated as  
21 “Confidential” must be clearly so designated before the Document, Testimony or  
22 Information is Disclosed or produced. The parties may agree that the case name  
23 and number are to be part of the “Confidential” designation. The “Confidential”  
24 designation should not obscure or interfere with the legibility of the designated  
25 Information.

26 a. For Documents (apart from transcripts of depositions or other  
27 pretrial or trial proceedings), the Designating Party must affix the legend  
28

1 “Confidential” on each page of any Document containing such designated  
2 Confidential Material.

3 b. For Testimony given in depositions the Designating Party may  
4 either:

5 i. identify on the record, before the close of the deposition,  
6 all “Confidential” Testimony, by specifying all portions of the  
7 Testimony that qualify as “Confidential;” or

8 ii. designate the entirety of the Testimony at the deposition  
9 as “Confidential” (before the deposition is concluded) with the right to  
10 identify more specific portions of the Testimony as to which  
11 protection is sought within 30 days following receipt of the deposition  
12 transcript. In circumstances where portions of the deposition  
13 Testimony are designated for protection, the transcript pages  
14 containing “Confidential” Information may be separately bound by  
15 the court reporter, who must affix to the top of each page the legend  
16 “Confidential,” as instructed by the Designating Party.

17 c. For Information produced in some form other than Documents,  
18 and for any other tangible items, including, without limitation, compact discs or  
19 DVDs, the Designating Party must affix in a prominent place on the exterior of the  
20 container or containers in which the Information or item is stored the legend  
21 “Confidential.” If only portions of the Information or item warrant protection, the  
22 Designating Party, to the extent practicable, shall identify the “Confidential”  
23 portions.

24 5. The inadvertent production by any of the undersigned Parties or non-  
25 Parties to the Proceedings of any Document, Testimony or Information during  
26 discovery in this Proceeding without a “Confidential” designation, shall be without  
27 prejudice to any claim that such item is “Confidential” and such Party shall not be  
28 held to have waived any rights by such inadvertent production. In the event that

1 any Document, Testimony or Information that is subject to a “Confidential”  
2 designation is inadvertently produced without such designation, the Party that  
3 inadvertently produced the document shall give written notice of such inadvertent  
4 production within twenty (20) days of discovery of the inadvertent production,  
5 together with a further copy of the subject Document, Testimony or Information  
6 designated as “Confidential” (the “Inadvertent Production Notice”). Upon receipt  
7 of such Inadvertent Production Notice, the Party that received the inadvertently  
8 produced Document, Testimony or Information shall promptly destroy the  
9 inadvertently produced Document, Testimony or Information and all copies  
10 thereof, or, at the expense of the producing Party, return such together with all  
11 copies of such Document, Testimony or Information to counsel for the producing  
12 Party and shall retain only the “Confidential” designated Materials, or,  
13 alternatively, retain the copy under seal in the attorney for the party’s offices until  
14 application is made by the producing Party to the court as to whether the  
15 documentation produced is confidential or not according to the procedures set forth  
16 in Paragraph 6 below. Should the receiving Party choose to destroy such  
17 inadvertently produced Document, Testimony or Information, the receiving Party  
18 shall notify the producing Party in writing of such destruction within ten (10) days  
19 of receipt of written notice of the inadvertent production. This provision is not  
20 intended to apply to any inadvertent production of any Information protected by  
21 attorney-client or work product privileges. In the event that this provision conflicts  
22 with any applicable law regarding waiver of confidentiality through the inadvertent  
23 production of Documents, Testimony or Information, such law shall govern.

24         6. In the event that counsel for a Party receiving Documents, Testimony  
25 or Information in discovery designated as “Confidential” objects to such  
26 designation with respect to any or all of such items, said counsel shall advise  
27 counsel for the Designating Party, in writing, of such objections, the specific  
28 Documents, Testimony or Information to which each objection pertains, and the

1 specific reasons and support for such objections (the “Designation Objections”).  
2 Counsel for the Designating Party shall have thirty (30) days from receipt of the  
3 written Designation Objections to either (a) agree in writing to de-designate  
4 Documents, Testimony or Information pursuant to any or all of the Designation  
5 Objections and/or (b) file a motion with the Court seeking to uphold any or all  
6 designations on Documents, Testimony or Information addressed by the  
7 Designation Objections (the “Designation Motion”). Pending a resolution of the  
8 Designation Motion by the Court, any and all existing designations on the  
9 Documents, Testimony or Information at issue in such Motion shall remain in  
10 place. The Designating Party shall have the burden on any Designation Motion of  
11 establishing the applicability of its “Confidential” designation. In the event that  
12 the Designation Objections are neither timely agreed to nor timely addressed in the  
13 Designation Motion, then such Documents, Testimony or Information shall be de-  
14 designated in accordance with the Designation Objection applicable to such  
15 material.

16 7. Access to and/or Disclosure of Confidential Materials designated as  
17 “Confidential” shall be permitted only to the following persons:

- 18 a. the Court;
- 19 b. (1) Attorneys of record in the Proceedings and their affiliated  
20 attorneys, paralegals, clerical and secretarial staff employed by such attorneys who  
21 are actively involved in the Proceedings and are not employees of any Party. (2)  
22 In-house counsel to the undersigned Parties and the paralegal, clerical and  
23 secretarial staff employed by such counsel. Provided, however, that each non-  
24 lawyer given access to Confidential Materials shall be advised that such Materials  
25 are being Disclosed pursuant to, and are subject to, the terms of this Protective  
26 Order and that they may not be Disclosed other than pursuant to its terms;
- 27 c. those officers, directors, partners, members, employees and  
28 agents of all non-designating Parties that counsel for such Parties deems necessary

1 to aid counsel in the prosecution and defense of this Proceeding; provided,  
2 however, that prior to the Disclosure of Confidential Materials to any such officer,  
3 director, partner, member, employee or agent, counsel for the Party making the  
4 Disclosure shall deliver a copy of this Protective Order to such person, shall  
5 explain that such person is bound to follow the terms of such Order, and shall  
6 secure the signature of such person on a statement in the form attached hereto as  
7 Exhibit A;

8 d. court reporters in this Proceeding (whether at depositions,  
9 hearings, or any other proceeding);

10 e. any deposition, trial or hearing witness in the Proceeding who  
11 previously has had access to the Confidential Materials, or who is currently or was  
12 previously an officer, director, partner, member, employee or agent of an entity  
13 that has had access to the Confidential Materials;

14 f. any deposition or non-trial hearing witness in the Proceeding  
15 who previously did not have access to the Confidential Materials; provided,  
16 however, that each such witness given access to Confidential Materials shall be  
17 advised that such Materials are being Disclosed pursuant to, and are subject to, the  
18 terms of this Protective Order and that they may not be Disclosed other than  
19 pursuant to its terms;

20 g. mock jury participants, provided, however, that prior to the  
21 Disclosure of Confidential Materials to any such mock jury participant, counsel for  
22 the Party making the Disclosure shall deliver a copy of this Protective Order to  
23 such person, shall explain that such person is bound to follow the terms of such  
24 Order, and shall secure the signature of such person on a statement in the form  
25 attached hereto as Exhibit A.

26 h. outside experts or expert consultants consulted by the  
27 undersigned Parties or their counsel in connection with the Proceeding, whether or  
28 not retained to testify at any oral hearing; provided, however, that prior to the



1 Disclosure of Confidential Materials to any such expert or expert consultant,  
2 counsel for the Party making the Disclosure shall deliver a copy of this Protective  
3 Order to such person, shall explain its terms to such person, and shall secure the  
4 signature of such person on a statement in the form attached hereto as Exhibit A. It  
5 shall be the obligation of counsel, upon learning of any breach or threatened breach  
6 of this Protective Order by any such expert or expert consultant, to promptly notify  
7 counsel for the Designating Party of such breach or threatened breach;

8 i. parties to this litigation; and

9 j. any other person that the Designating Party agrees to in writing.

10 8. Confidential Materials shall be used by the persons receiving them  
11 only for the purposes of preparing for, conducting, participating in the conduct of,  
12 and/or prosecuting and/or defending the Proceeding, and not for any business or  
13 other purpose whatsoever.

14 9. Any Party to the Proceeding (or other person subject to the terms of  
15 this Protective Order) may ask the Court, after appropriate notice to the other  
16 Parties to the Proceeding, to modify or grant relief from any provision of this  
17 Protective Order.

18 10. Entering into, agreeing to, and/or complying with the terms of this  
19 Protective Order shall not:

20 a. operate as an admission by any person that any particular  
21 Document, Testimony or Information marked "Confidential" contains or reflects  
22 trade secrets, proprietary, confidential or competitively sensitive business,  
23 commercial, financial or personal information; or

24 b. prejudice in any way the right of any Party (or any other person  
25 subject to the terms of this Protective Order):

26 i. to seek a determination by the Court of whether any  
27 particular Confidential Material should be subject to protection as  
28 "Confidential" under the terms of this Protective Order; or



1                   ii.     to seek relief from the Court on appropriate notice to all  
2                   other Parties to the Proceeding from any provision(s) of this  
3                   Protective Order, either generally or as to any particular Document,  
4                   Material or Information.

5           11.   Any Party to the Proceeding who has not executed this Protective  
6   Order as of the time it is presented to the Court for signature may thereafter  
7   become a Party to this Protective Order by its counsel's signing and dating a copy  
8   thereof and filing the same with the Court, and serving copies of such signed and  
9   dated copy upon the other Parties to this Protective Order.

10          12.   Any Information that may be produced by a non-Party witness in  
11   discovery in the Proceeding pursuant to subpoena or otherwise may be designated  
12   by such non-Party as "Confidential" under the terms of this Protective Order, and  
13   any such designation by a non-Party shall have the same force and effect, and  
14   create the same duties and obligations, as if made by one of the undersigned Parties  
15   hereto. Any such designation shall also function as a consent by such producing  
16   Party to the authority of the Court in the Proceeding to resolve and conclusively  
17   determine any motion or other application made by any person or Party with  
18   respect to such designation, or any other matter otherwise arising under this  
19   Protective Order.

20          13.   If any person subject to this Protective Order who has custody of any  
21   Confidential Materials receives a subpoena or other process ("Subpoena") from  
22   any government or other person or entity demanding production of Confidential  
23   Materials, the recipient of the Subpoena shall promptly give notice of the same by  
24   electronic mail transmission, followed by either express mail or overnight delivery  
25   to counsel of record for the Designating Party, and shall furnish such counsel with  
26   a copy of the Subpoena. Upon receipt of this notice, the Designating Party may, in  
27   its sole discretion and at its own cost, move to quash or limit the Subpoena,  
28   otherwise oppose production of the Confidential Materials, and/or seek to obtain

1 confidential treatment of such Confidential Materials from the subpoenaing person  
2 or entity to the fullest extent available under law. The recipient of the Subpoena  
3 may not produce any Documents, Testimony or Information pursuant to the  
4 Subpoena prior to the date specified for production on the Subpoena.

5 14. Nothing in this Protective Order shall be construed to preclude either  
6 Party from asserting in good faith that certain Confidential Materials require  
7 additional protection. The Parties shall meet and confer to agree upon the terms of  
8 such additional protection.

9 15. If, after entry of this Protective Order, any Confidential Materials  
10 submitted by a Designating Party under the terms of this Protective Order is  
11 Disclosed by a non-Designating Party to any person other than in the manner  
12 authorized by this Protective Order, the non-Designating Party responsible for the  
13 Disclosure shall bring all pertinent facts relating to the Disclosure of such  
14 Confidential Materials to the immediate attention of the Designating Party.

15 16. This Protective Order is entered into without prejudice to the right of  
16 any Party to knowingly waive the applicability of this Protective Order to any  
17 Confidential Materials designated by that Party. If the Designating Party uses  
18 Confidential Materials in a non-Confidential manner, then the Designating Party  
19 shall advise that the designation no longer applies.

20 17. Without written permission from the designating party or a Court  
21 Order secured after appropriate notice to all interested persons, a party may not file  
22 in the public record in this action any Confidential Materials. A party that seeks to  
23 file under seal any Confidential Material must comply with Civil Local Rule 79-  
24 5.1.

25 18. The Parties shall meet and confer regarding the procedures for use of  
26 Confidential Materials at trial and shall move the Court for entry of an appropriate  
27 order.  
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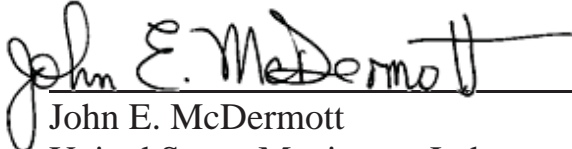
1           19. Nothing in this Protective Order shall affect the admissibility into  
2 evidence of Confidential Materials, or abridge the rights of any person to seek  
3 judicial review or to pursue other appropriate judicial action with respect to any  
4 ruling made by the Court concerning the issue of the status of Protected Material.

5           20. This Protective Order shall continue to be binding after the conclusion  
6 of this Proceeding and all subsequent proceedings arising from this Proceeding,  
7 except that a Party may seek the written permission of the Designating Party or  
8 may move the Court for relief from the provisions of this Protective Order. To the  
9 extent permitted by law, the Court shall retain jurisdiction to enforce, modify, or  
10 reconsider this Protective Order, even after the Proceeding is terminated.

11           21. Upon written request made within thirty (30) days after the settlement  
12 or other termination of the Proceeding, the undersigned Parties shall have thirty  
13 (30) days to either (a) promptly return to counsel for each Designating Party all  
14 Confidential Materials and all copies thereof (except that counsel for each Party  
15 may maintain in its files, in continuing compliance with the terms of this Protective  
16 Order, all work product, and one copy of each pleading filed with the Court and  
17 one copy of each deposition together with the exhibits marked at the deposition),  
18 (b) agree with counsel for the Designating Party upon appropriate methods and  
19 certification of destruction or other disposition of such Confidential Materials, or  
20 (c) as to any Documents, Testimony or other Information not addressed by sub-  
21 paragraphs (a) and (b), file a motion seeking a Court order regarding proper  
22 preservation of such Materials. To the extent permitted by law the Court shall  
23 retain continuing jurisdiction to review and rule upon the motion referred to in sub-  
24 paragraph (c) herein.

25           **IT IS SO ORDERED.**

26           Date: September 12, 2017

  
\_\_\_\_\_  
John E. McDermott

United States Magistrate Judge

**EXHIBIT A**

**CERTIFICATION RE CONFIDENTIAL DISCOVERY MATERIALS**

I hereby acknowledge that I, \_\_\_\_\_ [NAME],  
\_\_\_\_\_[POSITION AND EMPLOYER],  
am about to receive Confidential Materials supplied in connection with the  
Proceeding, 2:17-cv-00378-SVW-JEM. I certify that I understand that the  
Confidential Materials are provided to me subject to the terms and restrictions of  
the Stipulated Protective Order filed in this Proceeding. I have been given a copy  
of the Stipulated Protective Order; I have read it, and I agree to be bound by its  
terms.

I understand that Confidential Materials, as defined in the Stipulated  
Protective Order, including any notes or other records that may be made regarding  
any such materials, shall not be Disclosed to anyone except as expressly permitted  
by the Stipulated Protective Order. I will not copy or use, except solely for the  
purposes of this Proceeding, any Confidential Materials obtained pursuant to this  
Protective Order, except as provided therein or otherwise ordered by the Court in  
the Proceeding.

I further understand that I am to retain all copies of all Confidential  
Materials provided to me in the Proceeding in a secure manner, and that all copies  
of such Materials are to remain in my personal custody until termination of my  
participation in this Proceeding, whereupon the copies of such Materials will be

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1 returned to counsel who provided me with such Materials.

2 I declare under penalty of perjury, under the laws of the United States of  
3 America, that the foregoing is true and correct. Executed this \_\_\_\_ day of  
4 \_\_\_\_\_, 20\_\_, at \_\_\_\_\_.

5  
6 DATED:

BY: \_\_\_\_\_

7 Signature

8 \_\_\_\_\_  
9 Title Address

10 \_\_\_\_\_  
11 City, State, Zip

12 \_\_\_\_\_  
13 Telephone Number

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